

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

RYSTA LEONA SUSMAN, Both  
individually and as Legal Guardian of  
Shane Allen Loveland; and JACOB  
SUMMERS

CASE NO. 8:18CV127

Plaintiff(s),

v.

THE GOODYEAR TIRE & RUBBER  
COMPANY

Defendant(s).

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**PLAINTIFFS' BRIEF IN OPPOSITION TO GOODYEAR'S MOTION IN LIMINE  
SEEKING TO EXCLUDE OPINIONS FROM PLAINTIFFS' REHABILITATION  
EXPERT, CRAIG LICHTBLAU, MD, RELATING TO MEDICAL TREATMENT MR.  
LOVELAND WILL LIKELY NOT NEED IN THE FUTURE AND RELATED  
DOCUMENTS**

Plaintiffs submit this Brief in Opposition to Goodyear's Motion in Limine seeking to exclude opinions from Plaintiffs' rehabilitation expert, Craig Lichtblau, MD, and would show the Court as follows:

**ARGUMENT**

**I. Dr. Lichtblau's Testimony about Potential Complications is Relevant.**

In his report, Plaintiffs' rehabilitation expert Dr. Craig Lichtblau lists a series of complications or conditions that Mr. Loveland may suffer in the future due to the vulnerabilities caused by his injuries. As Dr. Lichtblau states in his report, the various complications Mr. Loveland may develop are somewhat random, and therefore costs cannot be determined with medical certainty:

Medical Care	Period Over Which Services Provided	Frequency	Cost Per Visit/Item
<u>Possible Surgical Procedures and Potential Complications:</u>			
Pulmonary	Life		
Urological	Life		
Thrombophlebitis	Life		
Renal Complications	Life		
Seizure Activity	Life		
Hydrocephalus Requiring VP Shunt	Life		
Infection of Shunt			
Shunt Replacement			
Endoscopy			
Aspiration Pneumonia			
Urosepsis			

**COSTS  
CANNOT  
BE DETERMINED  
WITH MEDICAL  
CERTAINTY.**

As Dr. Lictchblau made clear in his testimony, he will not assign costs for these services or argue that Mr. Loveland should be awarded money in future medical expenses for potential complications.

Nonetheless, it is relevant for the jury to know about these potential complications, all of which will potentially endanger Mr. Loveland for the remainder of his life. Not only is the existence of these possible medical complications relevant to estimating Mr. Loveland's life expectancy, but they are also relevant to Mr. Loveland's mental anguish and distress. Even if Mr. Loveland's probable future medical care is completely provided, he will always have to worry

about the numerous potential medical complications to which he is now uniquely vulnerable due to his condition.

Being made vulnerable to these expensive and life-threatening conditions is a distinct element of the harm done to Mr. Loveland, but Goodyear's Motion to seeks to conceal the full nature and medical consequences of Plaintiffs' injuries. While Mr. Loveland's damages for future medical expenses are limited to those costs he is more than likely to incur, the jury is entitled to understand the reality of his medical situation. As such, Dr. Litchblau should be permitted to testify about Mr. Loveland's vulnerability to medical complications and the various types of health care services he may require because of his injuries.

### **CONCLUSION**

Because Dr. Litchblau's testimony about potential complications and health care services are relevant to Plaintiffs' medical condition, his mental anguish, and his overall life expectancy, the Court should deny Goodyear's Motion.

Respectfully Submitted,

KAster, LYNCH, FARRAR & BALL, L.L.P.

Dated: February 11, 2020

By 

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with NECivR 7.1(d)(3) and further certify that the word count function was applied to include all text, including the caption, headings, footnotes, and quotations. This document was prepared using Microsoft Word 2013 and contains 636 words.

## **CERTIFICATE OF SERVICE (CM/ECF)**

I HEREBY CERTIFY that on February 11, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

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